

Mr Anstey

My request for review is as “voluminous” as your reasons for decision are idiotic.

I would have no need to produce such a “voluminous” request for review if you did not, among other things:

- a) systematically and deliberately ignore the totality of the evidence in order to reach findings and conclusions that were convenient to you and the Australian Public Service Commission;
- b) spew blatant falsehoods about Commonwealth statutes, including the falsehood that since “the PID Act does not provide a mechanism for a finalised PID investigation to be reopened” the Commonwealth Ombudsman “cannot take any action that would cause an agency to reinvestigate a PID”;
- c) selectively use information, including policy information, to in order to reach findings and conclusions that were convenient to you and the Australian Public Service Commission; and
- d) trash unanimous judgments of the High Court of Australia, and the Full Court of the Federal Court, by denying me procedural fairness and committing a jurisdictional error.

Aside from demonstrating to you and your superiors that I have been forced to hold your hand, put the evidence that was available to you under your nose (citing the items of evidence, with page and pin-point references in some of those citations), prompt you, like a toddler, on how to assess, or draw inferences from, the materials placed before your eyes, my thorough and “voluminous” email serves another purpose. I am able to draw evidence of the content of my interactions with officials in the Office of the Commonwealth Ombudsman to the attention of certain interested parties. I do not want it to be said that I did not bend over backwards to give the geniuses in the Office of the Commonwealth Ombudsman all they needed to make lawful and factually accurate decisions when the time comes for a markedly less private reckoning.

Most of the garbage in your record of decision can be cut through with a few well crafted freedom of information requests.

As you may be aware, I have submitted a freedom of information request for access to the logically probative and relevant “documented decision” of the Agency Head of the Federal Court of Australia Statutory Agency evidencing the role review that you claim was reasonably open to the PID Investigator to have concluded had been conducted.

I look forward to receiving this “documented decision” that is logically probative of, and relevant to, the fact that a role review was conducted such that “it was appropriate and necessary for some positions to be held at EL2 level”, even though freedom of information decision makers in the Federal Court of Australia have publicly conceded that there are no documents, let alone logically probative and relevant records, evidencing:

- a) a role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Queensland District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth);
- b) a role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar & District Registrar role in the Western Australia District Registry of the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth); and
- c) a role evaluation (or role review) such that the SES Band 1 classified National Judicial Registrar role in the Federal Court was, in light of the work value of the group of duties described in the work level standards and a proper job analysis, reclassified and allocated an Executive Level 2 classification for the purposes of rule 9 of the *Public Service Classification Rules 2000* (Cth).

Even Charmaine Sims, the General Counsel of the APSC, has had to concede, in submissions to the OAIC, that the APSC does not have documentary records of any role re-evaluations or role reviews, which makes me wonder just how you concluded that it “was reasonably open to the PID Investigator to have concluded that there was a review conducted” given that any such finding on Kate McMullan’s part had to be based on logically probative and relevant evidence: *Public Interest Disclosure Standards 2013* (Cth), s 12. Anyway, I’m sure the “documented decision” you refer to will either vindicate your decision or condemn it for the garbage I know it, and have demonstrated it, to be.

I also look forward to receiving a decision in response to my freedom of information request for access to the documents that you relied on to make the finding, or draw the conclusion, that the Office of the Commonwealth Ombudsman “cannot take any action that would cause an agency to reinvestigate a PID ... because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened”, even though it is obvious, according to the provisions of the *Public Interest Disclosure Act 2013* (Cth), that the term “investigate”, in the context of investigating disclosable conduct contained in a public interest disclosure that has been allocated to an agency for investigation, extends to the “reinvestigation” of disclosable conduct contained in a public interest disclosure that has been allocated to an agency for investigation.

Your colleagues in the legal team of the Office of the Commonwealth Ombudsman managed to eke out an extension of time to deal with request for the documents in exchange for an undertaking, made to officials in the OAIC, that they would provide a decision on 10 March 2023. Of course, they haven’t provided a decision, which means that the principal officer of the Office of the Commonwealth Ombudsman, Commonwealth Ombudsman Iain Anderson, is taken to have personally made a decision refusing access to the documents that you relied on to make the finding, or draw the conclusion, that the Office of the Commonwealth Ombudsman “cannot take any action that would cause an agency to reinvestigate a PID ... because the PID Act does not provide a mechanism for a finalised PID investigation to be reopened.”

Apparently legality is a dispensable standard in the Office of the Commonwealth Ombudsman. I mean, who cares about statutory obligations set out in the laws of the Commonwealth, or undertaking provided to officials in another Commonwealth Integrity Agency? All rather unsurprising given my experiences.

I know if I were the principal officer of an agency, I would be miffed if my authorised officials (lawyers to boot) had failed to comply with their legal obligations and left me holding the bag. In case Mr Anderson is not aware of the goings on in his agency, which would be most embarrassing, I’ve done him the courtesy of including him in this email.

Naturally, the request is now the subject of IC review (MR23/00350). I do wonder what will be provided to the Office of the Information Commissioner when the Information Commissioner’s officials come knocking.

Anyway, please find the three page document explaining why your decision was wrong attached to this email.

Discloser

Sent with [Proton Mail](#) secure email.

----- Original Message -----

On Wednesday, March 22nd, 2023 at 12:38 AM, PID <PID@ombudsman.gov.au> wrote:

Our ref: 2021-104592

Dear Discloser

I refer to your request for a review of my decision. I note the voluminous nature of your request. We will not

be actioning the request as it stands. You are welcome to provide us with 3 pages explaining why you believe the decision was wrong. We can then assess the request and decide whether to conduct a review.

Kind regards

Mark

A/g Assistant Director

Public Interest Disclosure Team

COMMONWEALTH OMBUDSMAN

Phone: 1300 362 072

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Website: www.ombudsman.gov.au



Influencing systemic improvement in public administration

----- Original Message -----

On Monday, December 12th, 2022 at 5:51 AM, PID <PID@ombudsman.gov.au> wrote:

OFFICIAL: Sensitive

Dear Discloser

Thank you for your emails of 10 and 12 December. Please accept my apologies for not providing you with the investigation outcome decision by Friday 9 December as we advised would occur.

The investigation of your complaint is now finalised, and the investigation officer's decision is attached.

Thank you again for your patience.

Yours sincerely

Kathleen

Assistant Director, Public Interest Disclosure team